

# **Annex 1**

## **Information for full notification of mergers**

### **1. Description of the merger**

1.1. Provide an executive summary of the merger, specifying the parties to the merger, the nature of the merger (full or partial acquisition, merger or joint venture) and the areas of activity of the parties to the merger. Also please state the markets on which the merger will have impact.

1.2. Provide a summary (up to 500 words) of the information, drafted in a form that is suitable for publication; i.e. without any confidential information or any business secrets. This description will form the basis of the Competition Authority's publication of the merger at the time of notification.

### **2. Information about the parties**

#### **2.1. Information about the notifying party**

The following details must be provided as regards the notifying party or parties:

- a) name and address of the undertaking;
- b) the nature of the undertaking's business (i.e. the groups of products or services produced, purchased or sold by the undertaking); fields of activity not covered by the merger must also be stated;
- c) name, position, address, telephone number and e-mail address of the contact person; and
- d) the address to which documents and decisions from the Competition Council and the Competition Authority may be delivered.

#### **2.2. Information about the other parties to the merger**

The following details must be provided as regards each of the parties to the merger beside the notifying party:

- a) name and address of the undertaking;
- b) the activity of the parties to the merger; and
- c) name, position, address, telephone number and e-mail address of the contact person.

## 2.3 Information about representatives

If the notification is signed by representatives of the undertakings, information must be provided as to each representative's name, address, telephone number and e-mail address, indicating which party to the merger the representative in question represents.

## 3. Notification to other competition authorities

If the merger has been notified or will be notified to other competition authorities, including the European Commission, this must be stated, indicating the names of these competition authorities as well as any relevant contact person.

## 4. Information about the merger itself

4.1. Please describe the merger, specifying:

- a) whether the merger comprises a merger of two or more previously independent undertakings, acquisition of direct or indirect control of the entirety of or parts of one or more other undertakings, establishment of a full-function joint venture or whether in another manner it will result in decisive influence on the operations of the undertaking, cf. Section 12 a(3) of the Competition Act;
- b) the proposed or expected dates of any major events designed to bring about the completion of the merger;
- c) the proposed structure of ownership and control after the completion of the merger;
- d) the value of the transaction (the purchase price or the value of all the assets involved); and
- e) the sector codes (NACE codes) involved in the merger.

4.2. Please state the economic rationale of the merger.

## 5. Financial information

For each of the undertakings concerned, please state the following in DKK for the most recent financial year:

- a) turnover in Denmark;
- b) turnover in the EU; and
- c) global turnover.

## 6. Ownership and control

6.1. For each of the parties to the merger provide a list of all undertakings belonging to the same group. This list must include:

- a) all undertakings or persons controlling these parties, directly or indirectly; and
- b) all undertakings active on any of the markets referred to in Sections 7.1 and 7.2 below and which are controlled, directly or indirectly, by:
  - i. one or more of the parties to the merger;
  - ii. any other undertaking identified in subsection a).

For each entry listed above, the nature and means of control should be specified.

6.2. With respect to the parties to the merger and each undertaking or person identified in response to Sections 6.1. a) and b), provide:

- a) a list of all other undertakings which are active on any of the markets referred to in Sections 7.1 and 7.2 below and in which undertakings, or persons, of the group hold individually or collectively 10 % or more of the voting rights, issued share capital or other securities;
- b) a list for each undertaking of the members of their board of management or board of directors who are also members of the board of management or the board of directors of any other undertaking which is active in one or more of the markets stated in Sections 7.1 and 7.2 below. In each case, please identify the name of the other undertaking and the positions held as well as the name and title of the person holding the position; and
- c) details of acquisitions made during the last three years by the groups identified above (Section 6.1) of undertakings active in one or more of the markets stated in Sections 7.1 and 7.2 below.

## 7. Markets

The relevant product and geographic market(s) will determine the basis for the assessment of the market power which the new entity will obtain as a result of the merger.

The definition of the relevant market is set out in Section 5 a of the Competition Act. Information about the relevant markets must be provided by the notifying party on the basis of the following definitions:

### Relevant product markets

A relevant product market comprises all those products and/or services which are regarded as interchangeable and substitutable by the consumer, by reason of their characteristics, prices and intended use. A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.

Factors relevant to the assessment of the relevant product market include the analysis of why the products or services are considered part of this market and why others are not, having regard to, e.g. substitutability, conditions of competition, prices, cross-price elasticity of

demand or other factors relevant to the definition of the product markets (e.g. supply-side substitutability).

### Relevant geographic markets

The relevant geographic market comprises the area in which the undertakings concerned supply and demand the products or services concerned, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant market include inter alia the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the undertakings' market share between this and neighbouring geographic areas, or substantial price differences.

### Affected markets

The affected markets consist of the relevant product markets within the relevant geographic market where:

- a) two or more of the parties to the merger are engaged in business activities in the same relevant product market and the merger will lead to a combined market share of 15 % or more (horizontal overlap); and/or
- b) one or more of the parties to the merger are engaged in business activities in a product market which is upstream or downstream of the product market in which one or more of the other parties to the merger are engaged, and where the parties either individually or together hold a market share of 25 % or more, regardless of whether there is a supplier/customer relationship between them or not (vertical relationships).

### Other markets in which the merger may have significant impact

The merger may also have significant impact on other product and geographic markets than the affected markets. This may, for example, be where:

- a) any of the parties to the merger has a market share larger than 25 % and any other party to the merger is a potential competitor into that market;<sup>1</sup> and/or where
- b) any of the parties to the merger has a market share larger than 25 % and a party to the merger holds important intellectual property rights for that market; and/or where
- c) any of the parties to the merger is currently present in a product market which is closely related<sup>2</sup> to a product market in which another party to the merger is engaged, and the individual or combined market share of the parties in any one of these markets is 25 % or more.

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<sup>1</sup> A party may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed and pursued such plans in the past two years.

<sup>2</sup> Product markets are closely related markets when the products are either complementary to each other, i.e. when e.g. the use of one product essentially implies the use of the other product (such as for staple machines and staples, and printers and printer cartridges) or when they belong to a range of products that is generally purchased by the same set of customers for the same end-use (e.g. whisky and gin sold to bars and restaurants or different materials for packaging a certain category of goods sold to producers of such goods).

7.1. Please state all affected markets.<sup>3</sup>

7.2. Please state all other markets in which the merger may have significant impact.

## 8. Information about markets

8.1. For each of the markets stated in Sections 7.1 and 7.2 above, provide the following information for the last three financial years:

- a) an estimate of the total size of the market in terms of sales value and volume, providing documentation of how these estimates have been calculated;
- b) the sales measured in value and volume, as well as an estimate of the market share of each of the parties to the merger;
- c) an estimate of the market share in value and volume of all competitors (including importers) having a market share of 5 % or more of the geographic market concerned, however a minimum of five undertakings.<sup>4</sup> On this basis, provide an estimate of the HHI index<sup>5</sup> pre- and post-merger, and the difference between the two (the delta);<sup>6</sup> please indicate the proportion of the market shares used as a basis to calculate the HHI; please identify the sources used to calculate these market shares and provide documentation where available to confirm the calculation; provide names, addresses, e-mail addresses and telephone numbers as well as contact persons for these competitors;
- d) an estimate of the sales value and volume of any imports; please specify:
  - i. the proportion of such imports that are derived from the parties to the merger;
  - ii. an estimate of the extent to which any trade barriers, such as tariffs, quotas, transportation costs or legal barriers, affect these imports;
- e) please state the manner in which the parties to the merger produce, price and sell their products and/or services; and
- f) please state the extent to which the parties to the merger are vertically integrated undertakings compared to their largest competitors.

Values must be stated in Danish kroner (DKK) and volumes must be stated in units. The value and volume of a market should be stated so as to reflect output less exports plus imports for the geographic areas under consideration.

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<sup>3</sup> This information must be provided for the relevant geographic market, but not for any area smaller than Denmark.

<sup>4</sup> If less than five undertakings have a market share of 5 % or more, information must be provided about the top five competitors.

<sup>5</sup> HHI stands for the Herfindahl-Hirschman Index, a measure of market concentration. The HHI is the sum of the squares of all the undertakings' market shares in the market.

<sup>6</sup> The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the participating undertakings.

## **9. General conditions in affected markets**

For each of the markets stated in Sections 7.1 and 7.2 above, please state the following:

### **Purchase situation**

9.1. For each of the markets stated in Sections 7.1 and 7.2 and for each of the parties to the merger, please state the five largest independent suppliers (i.e. undertakings that are not part of the undertaking's group) as well as the share of their purchases, which each of these suppliers account for. Please state the name, position, address, telephone number and e-mail address for the relevant contact persons with these suppliers.

### **Structure of supply**

9.2. Please state the distribution channels and service networks that exist in the markets stated in Sections 7.1. and 7.2. Please state separately:

- a) the prevailing distribution systems and their importance as well as the extent to which the distribution is carried out by the participating undertakings or by third parties; and
- b) the prevailing service networks (such as repair and maintenance) and their importance as well as the extent to which these services are performed by the parties to the merger or by third parties.

9.3. Provide an estimate of the total capacity of the market, stating the share of this capacity held by each party to the merger as well as the extent to which the parties to the merger utilise their capacity.

9.4. Please state the geographic locations of the productions plants of the parties to the merger.

9.5. Please state whether within the next three years any of the parties to the merger:

- a) plans to launch new products in one or more of the affected markets;
- b) plans to expand or contract its production or sales capacity; or
- c) intends to use subcontractors.

If the answer is affirmative, provide an estimate of the expected sales as well as an estimate of the market shares of the parties to the merger for the next three years.

9.6. Please state other factors of importance for the structure of supply.

### **Structure of demand**

9.7. For each of the markets stated in Sections 7.1 and 7.2 and for each of the parties to the merger, please state the five largest independent customers (i.e. undertakings that are not part of the undertaking's group) indicating the share of the total sales of such products sold by the relevant party to the merger which these customers account for. Please state the

name, position, address, telephone number and e-mail address for the relevant contact persons with these customers.

**9.8.** Explain the structure of demand in the markets stated in Sections 7.1 and 7.2 above. Please state separately:

- a) the phases of the markets in terms of, for example, take-off, expansion, maturity or decline, and a forecast of the expected growth rate of demand;
- b) the importance of customer preferences, for example in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products;
- c) the importance of product differentiation in terms of quality and other attributes and the extent to which the products of the parties to the merger can be substituted;
- d) the importance of time and costs to customers when they change suppliers;
- e) the level of concentration among the customers, i.e. the extent to which the customers comprise a few large or many small undertakings or a mixture thereof;
- f) whether the customers can be segmented into different categories, including a description of the 'typical customer' of each category; and
- g) the importance of exclusive distribution agreements and other types of long-term contracts.

### Market entry

Information about market entry must be provided for each of the markets stated in Sections 7.1 and 7.2.

**9.9.** Please state whether other undertakings have entered the market over the last five years. In the affirmative, provide (if possible) an estimate of their market share as well as the development hereof during the period in which these undertakings have operated in the market. Please state also the name, address, e-mail address, telephone number and relevant contact persons for these undertakings.

**9.10.** Please state whether any undertakings have exited the market over the last five years. In the affirmative, please state the name, address, e-mail address, telephone number and relevant contact persons for these undertakings.

**9.11.** Please state whether any of the parties to the merger have entered the market within the last five years. In the affirmative, please describe the entry barriers at the time of their entry.

**9.12.** Please state which other undertakings, which in the opinion of the notifying party, are likely to enter the market (including undertakings only operating in markets outside Denmark). Explain why such entry is likely and provide an estimate of the time within which it is likely to occur. Please state the name, address, e-mail address, telephone number and relevant contact persons for these undertakings.

9.13. Please state the various factors influencing entry into the markets, examining entry from both a geographical and product viewpoint. Please state separately:

- a) the estimated costs (research, production, establishing distribution systems, promotion, advertising, servicing, and so forth) of competitive and sustainable entry, indicating an estimate of the expected market share of such a competitor as well as the estimated time horizon;
- b) any legal or regulatory barriers to entry, such as required government authorisation or standards;
- c) any restrictions created by the existence of know-how, patents and other intellectual property rights;
- d) the extent to which one or more of the parties to the merger are licensors or licensees of patents, know-how and other rights;
- e) the importance of economies of scale for the production and distribution of products in the affected markets; and
- f) the importance of access to raw materials, required infrastructure, etc.

#### Research and development

9.14. Give an account of the importance of research and development for the long-term competitive ability of an undertaking operating in the affected market(s). Explain the nature of the research and development in the affected markets carried out by the parties to the merger. Please state in this connection:

- a. the intensities of research and development (i.e. research and development costs in relation to the turnover) in the affected markets and for each of the parties to the merger;
- b. the course of technological development in these markets (including developments in production methods, distribution systems, etc.);
- c. the major innovations that have been made in these markets, indicating the names of the undertakings responsible for these innovations; and
- d. the cycle of innovation in these markets and the stage in this cycle of innovation of the products made by the parties to the merger.

#### Cooperative agreements

9.15. Please state the extent to which horizontal or vertical cooperative agreements exist in the affected markets.

9.16. Please describe with respect to the affected markets the most important cooperative agreements entered into by the parties to the merger; e.g. joint production, licensing, specialization, distribution, long term supply, exchange of information and research and development agreements.

## Trade associations

9.17. Please identify the organizations, etc. of which the parties to the merger and possibly also their competitors are members. Please indicate relevant contract persons.

9.18. Please identify the organizations, etc. of which the customers and suppliers of the parties to the merger are members.

## 10. Efficiency gains

If the notifying party wants the Competition Council to consider any efficiency gains which the merger is expected to generate as part of its assessment, the following information should be provided:

- a) a detailed description of how the proposed merger will allow the merger to achieve efficiency gains;
- b) where reasonably possible, a quantification of the efficiency gains and an explanation of how the quantification was calculated;
- c) how the consumers will benefit from these gains and how likely this is; and
- d) the reason why the parties could not achieve the similar efficiencies by other means than through the proposed merger.

## 11. Coordination aspects related to joint ventures

Section 12 c(3) of the Competition Act stipulates that to the extent that the creation of a joint venture constituting a merger pursuant to Section 12 a(2) also has as its object or its effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be assessed in accordance with the criteria of Section 6(1) and Section 8(1) of the Competition Act or Article 101(1) and (3) TFEU, with a view to establishing whether or not the transaction can be approved.

If the merger constitutes a joint venture as referred to in Section 12 a(2) of the Competition Act, the following information must be provided:

- a) Whether two or more parents will retain, to a significant extent, activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture or in a neighbouring market closely related to this<sup>7</sup>.

If the answer is affirmative, please indicate for each of the markets referred to:

- i. the turnover of each parent in the preceding financial year;

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<sup>7</sup> Product markets are closely related markets when the products are either complementary to each other, i.e. when e.g. the use of one product essentially implies the use of the other product (e.g. for staple machines and staples, and printers and printer cartridges) or when they belong to a range of products that is generally purchased by the same set of customers for the same end use (such as whisky and gin sold to bars and restaurants or different materials for packaging a certain category of goods sold to producers of such goods).

- ii. the economic significance of the activities of the joint venture in relation to this turnover, and
- iii. the market share of each parent.

If the answer is negative, please justify your answer.

- b) If the answer to (a) is affirmative and in the notifying party's view the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of Section 6(1) of the Competition Act and possibly of Article 101(1) TFEU, reasons must be provided.
- c) Without prejudice to the answers to (a) and (b), please explain how the criteria set out in Section 8(1) of the Competition Act and possibly also Article 101(3) TFEU apply. The criteria for this are whether the transaction:
  - i. contributes to improving the efficiency of the production or distribution of goods or services or to promoting technical or economic progress;
  - ii. allows consumers a fair share of the resulting benefit;
  - iii. does not impose on the undertakings restrictions that are not indispensable to attain these objectives; and
  - iv. does not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

## **12. Supporting documentation**

The following must be enclosed with the notification:

- a) the most recent audited annual financial statements and annual reports for each of the parties to the merger. Where undertakings have been sold or acquired after the conclusion of the most recent financial year, documentation must be enclosed;
- b) copies of the final or most recent versions of all documents concerning the merger, regardless of whether the merger is brought about by agreement between the parties to the merger, acquisition of a controlling interest or a public takeover bid;
- c) analyses, reports, minutes of board meetings and similar documents related to the merger; and
- d) flowcharts and similar overviews for each of the parties to the merger.

### 13. Declaration

Along with the information referred to in Sections 1-12 above, a signed declaration must be submitted in which the notifying party declares:

- that the information stated in this notification is correct;
- that complete copies of the documents required in Annex 1 are enclosed; and
- that all representations are made in good faith

If the declaration is made by another party than the participating undertakings, we/I, the undersigned, guarantee that the information, etc. is stated on behalf of all participating undertakings. We/I, the undersigned, and all notifying undertakings are aware of the penalty provisions in Sections 22 and 23 of the Competition Act, i.e. Consolidation Act No. 972 of 13 August 2010.

Place and date

Place and date

Place and date

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Signature

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Signature

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Signature